DATO' MUSA HITAM

v.

S.H. ALATTAS & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
LIM BENG CHOON J
[CODE NO. 22-146-87]
21 AUGUST 1990

TORT: *Defamation - Defence of justification, fair comment and qualified privilege - Express malice - Aggravated damages - Order 78 r. 3(2) Rules of the High Court 1980 - Defamation Ordinance 1957 ss. 8, 9.*

The plaintiff sued the three defendants for libel. The words complained of were contained in a book written by the first defendant entitled "The Challenger - Siapa Lawan Siapa". The first defendant is the author, the second is the publisher whilst the third is the printer of the book.

The plaintiff alleged that the words complained of were calculated to disparage him in his office as well as to injure his character and reputation as a politician of national and international stature. The plaintiff also alleged that the defamatory words were published by the 1st defendant in order to increase the circulation of the book and with a view of making a profit from the sale of the book. In their joint statement of defence, the three defendants denied that the words complained of bore or were understood to bear or were capable of bearing the meanings attributed to them by the plaintiff. They also denied that the said words were calculated to disparage the plaintiff in his office; the defendants also pleaded justification, fair comment and qualified privilege.

In reliance on O. 78 r. 3(2) of the Rules of the High Court 1980 (RHC), the plaintiff asked for particulars as to which portion of the words complained of were true. The defendants responded by stating that the plaintiff was responsible for the killing of 14 innocent Muslims in the Memali incident in Kedah as the plaintiff was then the Acting Prime Minister and also the Minister of Home Affairs. The defendants also said that the plaintiff had accepted from one Clement D'Cruz money amounting to RM1 million. Not satisfied with these particulars, the plaintiff applied to the Court for an order that the defendants be directed to give further particulars to sustain their defence, and a consent order was duly given to that effect by the Court. The defendants did not comply with this order.

Held:

[1] With regard to the defendants' allegation that the plaintiff was a murderer:

(a) The test as to whether the words complained of were defamatory or not is whether, under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libellous sense. The test is objective and the question is what do the words mean as words and not what the defendant in his own mind meant by them or intended to mean. The fact that the person to whom the words were published might not believe them to be true is irrelevant and does not affect the right of action although it might affect the question of damages.

(b) Applying the test, the Court is satisfied that the words in their natural and ordinary meaning are defamatory of the plaintiff. They set up the plaintiff as a murderer or a person capable of committing or has the tendency to commit murder to achieve his ambitions.

(c) As to the defence of justification, it is a complete defence to an action of libel that the defamatory imputation is true. The onus of proving the truth of the defamatory imputation is on the defendants. It is not enough for them to prove that they believed that the imputation was true even though it was published as belief only. In considering the defence of justification and fair comment, the Court has not overlooked ss. 8 and 9 of the Defamation Ordinance 1957 which render the burden of proving justification and fair comment less strict.

(d) There is not even an iota of evidence to support the truth of the statements of fact alleged by the defendants. The plaintiff had said in his evidence that he did not give any instruction or directive to the police to resort to shooting. His evidence is corroborated by the White Paper published by the Government entitled '*The Memali Incident*' which clearly exonerated the plaintiff of any blame. There is no basis whatsoever for the defendants to blatantly accuse the plaintiff of taking the law in his own hands in instructing the police to kill the innocent victims.

(e) The next question for the Court to consider is whether the publication of the said words attract privilege, whether absolute or qualified. Even assuming that the words used amount to fair comment or are protected by qualified privilege, the next question to be asked is whether such defence has been defeated by malice. Applying the principles laid down in existing authorities to the facts of this case, it is highly incredible that the first defendant "honestly believed" that the plaintiff personally directed the killing of the victims of the Memali incident. The first defendant deliberately ignored the factual situation of the incident, his dominant purpose being to sensationalise the incident in order to sustain the unsustainable allegation against the plaintiff. His sensationalisation of the incident is motivated not by an honest belief of what he had said but rather by an ulterior motive to justify himself as a writer and to enhance the sale of his book, the publication of which was timed 38 days before the UMNO General Assembly.

[2] With regard to the defendants' allegations that the plaintiff was a cheat, swindler, corrupt and untrustworthy person, that he received the RM1 million donation on behalf of UMNO but that he pocketed the money, that he had received money and gifts from Clement D'Cruz and others, that he was a *toyol* who pocketed people's money:

(a) The Court finds such a bare allegation without any details, unacceptable as proof of the truth of the statement. In any case, assuming for a moment that the allegation is true, it can only go to show an isolated instance of misconduct on the part of the plaintiff and not his reputation as held by the public. Such an allegation, even if true (which the Court cannot accede), cannot justify the defamatory imputation made by the defendants against the plaintiff's reputation.

(b) It is also manifestly clear that the first defendant was not sure that his general allegations of cheating, swindling and corruption on the part of the plaintiff was true. An analysis of the evidence of the first defendant shows that his allegations were based on conjectures and supposition which he himself could not have honestly believed to be true.

(c) The Court finds the words complained of, in their ordinary and natural meaning, to be clearly defamatory. The question is whether justification and fair comment can be sustained by the defendants. Most of the allegations made by Clement D'Cruz are bare allegations unsupported by any concrete facts but rather based on conjectures and suppositions. The Court finds the integrity and credibility of this witness highly

questionable. In the circumstances, the Court finds that the first defendant has failed to prove his allegations that the plaintiff had pocketed the RM1 million or that he had received any money or gifts from this witness or any other persons.

(d) There is no evidence that the plaintiff had gone out of his way to solicit or ask for the donation from Bakland, Dapat or D'Cruz. There is, therefore, nothing in the evidence to justify the defamatory words used by the first defendant. The allegations of corruption is equally not established since no favour was granted or promised in return from the donation; neither was it shown that the plaintiff had granted any favour to any person.

(e) With regard to the defence of fair comment, the comment must be based on facts contained in or referred to in the publication complained of. The facts must be sufficiently true to make the comment fair. In the present case, the comments were based on rumours and as such the defence of fair comment must fail. In any case, even assuming that the words complained of amount to a fair comment or protected by qualified privilege, the defence is defeated by malice as the Court is satisfied that the first defendant is actuated by express or actual malice. The Court is convinced that the first defendant knew that the defamatory statements he made in the book are false or at least he had no genuine belief in the truth of the statements. The Court is also convinced that the first defendant published the libellous statements recklessly. The statements were expressed extravagantly, overcharged with epithets, hyperboles and rhetorical remarks, utterly beyond and disproportionate to the facts.

[3] The plaintiff has established 8 out of 12 charges in his statement of claim. The finding against the first defendant applies equally against the second and third defendants. In the absence of any explanation, the Court is entitled to infer that they had calmly calculated that the risks attendant on the publication, distribution and printing of the book did not outweigh the chances of profit. The Court is also entitled, in the absence of any explanation, to hold that they were aware that the words complained of were defamatory. They are therefore equally liable to the plaintiff.

[4] In awarding aggravated damages, the natural indignation of the Court at the injury inflicted on the plaintiff is a perfectly legitimate motive to make a generous rather than a mere moderate award to provide an adequate solatium. It is manifestly clear that the defendants' motive in publishing the book containing the defamatory words before the UMNO General Assembly, besides enhancing the first defendant's reputation, is to make financial gains. In fact, the profits from the book exceed RM100,000. The Court considers that the proper quantum of damages to be awarded to the plaintiff cannot be less than RM100,000.

[Order accordingly.]

Cases referred to:

Macintosh v. Dun [1908] AC 390
Gordon Berkeley Jones v. Clement John Skelton [1963] 1 WLR 1362
J.B. Jeyaretnam v. Goh Chok Tong [1985] 1 MLJ 334
Lewis v. Daily Telegraph Ltd. [1964] AC 234
Capital & Counties Bank v. Henty [1881-1882] Vol VII AC 741
Morgan v. Odhams Press Ltd. [1971] 2 All ER 1156
Smith's Newspaper Ltd. & Anor. v. Becker [1932] 47 CLR 279
Belt v. Lanes [1882] 51 LJ QB
E. Hulton & Co. v. Jones [1910] AC 20
Abdul Rahman Talib v. Seenivasagam & Anor. [1966] 2 MLJ 66
Sutherland v. Stopes [1925] AC 47

Adam v. Ward [1917] AC 309
Slim & Ors. v. Daily Telegraph Ltd. or Ors. [1968] 2 QB 157
Horrocks v. Lowel [1975] AC 135
J.B. Jeyaretnam v. Lee Kuan Yew [1982] CLJ (Rep) 38
Wernher Beit & Co. v. Markham [1901-1902] Vol. XVIII 143
Special v. Plato Films Ltd. [1961] AC 1091
P.P. v. Datuk Haji Harun bin Haji Idris (No. 2) [1977] 1 MLJ 15
R. Sankar v. State [1959] AIR Kerala 100
Morris v. Sanders [1954] 1 WLR 67
McCarey v. Associated Newspapers [1964] 2 QB 104
Broome v. Cassell [1972] AC 1027
Rookes v. Barnard [1964] AC 1129
Broadway Approvals v. Odhams Press [1965] 1 WLR 805

Legislation referred to:
Defamation Ordinance 1957, ss. 8, 9
Defamation Act 1952 [UK] s. 6
Evidence Act 1950, s. 32
Prevention of Corruption Act 1961, s. 3(a)(i)
Rules of the High Court 1980, O. 78 r. 3(2)

Other sources referred to:
Gatley on Libel and Slander 8th Edn., paras. 291, 1127

For the Plaintiff - Syed Ahmad Helmy (Pawanchik Merican with him); M/s. Yahya, Helmy & Co.
For the Defendants - Abdul Razak bin Ahmad (Hassan bin Ibrahim with him); M/s. Abdul Razak Ahmad

JUDGMENT

Lim Beng Choon J:

In this action the three defendants were sued by the plaintiff for libel. The plaintiff claimed that the libel consisted of the words used in certain paragraphs of the book entitled '*"The Challenger" Siapa Lawan Siapa*' (hereinafter referred to as 'the book'). The plaintiff filed his writ accompanied by a statement of claim on 16 April 1987 and on the same day he also applied by way of summons-in-chamber for an interim injunction restraining the defendants either by themselves and/or each of them, their servants and agents from printing, circulating, exhibiting, disseminating and publishing by sale or otherwise in any form whatsoever the book or any matter related to or otherwise connected with the book and all or any of the paragraphs in the book. The Court allowed his application and the interim injunction sought by him was granted also on the same day.

The 1st defendant was sued in his capacity as the author, the 2nd defendant as the publisher and distributor and the 3rd defendant as the printer of the book. The capacity of the three defendants in which they were sued is not denied. The following facts are likewise not disputed. The book was published on or about 19 March 1987 (see Exhibit D8A). In the first print 10,000 copies of the book were printed. Apparently all the 10,000 copies were almost sold out as a result of which a second print of another 10,000 copies were made on or about 13 April 1987 (see Exhibit D8B). Out of the second print of the 10,000 copies, 8,000 copies were sold out before the plaintiff could obtain the interim injunction from the Court to restrain *inter alia* the defendants from carrying out a further sale of the book. At the time of the publication of the book the plaintiff was the incumbent Deputy President of UMNO and he was going to defend his position at the coming UMNO General Assembly general election to be held on 27 April 1987.

It is also appropriate to state at the outset that in his evidence (which had not been seriously challenged), the plaintiff had stated that prior to his resignation as Deputy Prime Minister he had held a number of ministerial posts. In holding these posts he had rendered services which were beneficial to the country and the rakyat. In addition he had led a number of delegations to foreign countries to negotiate matters for the benefit of the country. He also said that he was well respected by leaders of foreign countries. He denied that he was dismissed as Assistant Minister on 28 July 1969, but he chose voluntarily to resign. Likewise on 27 February 1986 he voluntarily resigned from the post of Deputy Prime Minister as he could not agree with the Prime Minister on government policies as advocated by the Prime Minister. In making these assertions in his evidence there is no doubt that the plaintiff were trying to establish that he had an untainted reputation prior to and at the time of the publication of the book.

In para. 3 of his statement of claim the plaintiff reproduced the words used in the several paragraphs of the book by which he contended that the defendants falsely and maliciously printed and published the words concerning him. He also alleged in para. 4 thereof that the words used in the said paragraphs in their natural and ordinary meaning meant and was understood to mean that:

(1) The plaintiff is a cheat, liar, crook, swindler, corrupt, irresponsible and insincere person.

(2) The plaintiff is a murderer and/or person with murderous tendencies who is prepared to commit murder to achieve his ambitions.

(3) The plaintiff is a murderer of men, women and young children.

(4) The plaintiff is a traitor and/or treacherous person to the Malay race and nation.

(5) The plaintiff is a person who works for and who owes allegiance to foreign intelligence bodies and/or nations and is prepared to sacrifice the nation's sovereignty and interests to foreign powers and/or nations.

(6) The plaintiff is a communist and an irreligious person hiding behind the cloak of UMNO's struggle for the Malay race and Muslim religion to further his communist cause.

(7) The plaintiff is a cruel, unjust, inhuman and dangerous person who is capable of committing terrorism and create public disorder to achieve his ambition.

(8) The plaintiff is an insane person, a coward and a deserter.

(9) The plaintiff is an unfaithful person and is highly manipulative and untrustworthy.

(10) The plaintiff is a person incapable or managing his financial affairs.

(11) The plaintiff is a vengeful and vindictive person who has amassed wealth illegally.

(12) The plaintiff is power crazy, impatient, selfish and a person without principles who is prepared to do anything in his lust for political power.

The plaintiff therefore said in paras. 5 to 8 of the statement of claim that the words pleaded in para. 3 were calculated to disparage the plaintiff in his office as well as to injure the character and reputation of the plaintiff in his capacity as a politician of national and international stature. He also averred that by reason of the publication of the said words in relation to the plaintiff which words were and are untrue, the plaintiff had been severely injured in his credit, character and reputation. He accused that the defendant published the said words in order to increase the circulation of the book and with a view of making a profit from the sale of the book.

In their joint statement of defence the three defendants, while admitting that they were respectively the author, publisher and distributor and printer of the book, denied that the said words, as set out in para. 3 of the plaintiff's statement of claim, bore or were understood to bear or were capable of bearing or being understood to bear the meanings attributed to them by the plaintiff pursuant to para. 4 of the statement of claim. They also denied that the said words were calculated to disparage the plaintiff in his office and/or libellous and/or defamatory of the plaintiff. The crux of their defence of justification and fair comment is set out in para. 6 of their joint statement of defence which reads:

> 6. The defendants aver that in so far the said words pleaded in para. 3 of the Statement of Claim consist of allegation of facts, they are true in substance and in fact and in so far as they consist of expressions of opinion, they were fair comment made in good faith and without malice upon matters of public interest, namely in the plaintiff's capacity as a former Deputy Prime Minister and the Minister of Home Affairs of Malaysia and also in his capacity as a leading national politician and also in his capacity as the Deputy President of UMNO Malaysia.

They further contended that the said words were published on an occasion of qualified privilege.

In reliance on O. 78 r. 3(2) of the Rules of the High Court 1980, the plaintiff, through his solicitors, wrote to the defendants to ask for particulars to sustain their averments under para. 6 of their joint statement of defence. The particulars sought by the plaintiff were as follows:

> *Under para. 6*
>
> (i) Stating which of the words complained of the defendants alleges (sic) to be statement of fact;
>
> (ii) Stating the facts and matters relied on by the defendants in support of the allegation that the words alleged to be statements of facts are true.

In response to the request of the plaintiff for particulars as mentioned above the defendants asserted in their joint reply that the words complained of which the defendants alleged to be statements of fact could be found in certain paragraphs of the book. Putting them in concise summary form the particulars furnished by the defendants are as follows:

> *Paragraph 8 p. 42 and para. 2 p. 43*
>
> Dato Musa is responsible for the killing of 14 innocent Muslims in Memali who were innocent children and old folks.
>
> *Paragraph 2 p. 45*
>
> What wrong had the old folks and children done that Musa should direct the police to shoot them?
>
> *Paragraphs 5 and 6 p. 88*
>
> Musa told nobody that he had directed the police to kill the Muslims; not even the Prime Minister nor UMNO's political bureau. It was Musa alone who made the decision to kill the Muslims.

At the time of the Memali incident, the plaintiff was the Acting Prime Minister and Minister of Home Affairs. The Memali incident was revealed under the full text of the minutes of the Cabinet meeting on 20 November 1985. As the Prime Minister was away abroad the plaintiff as acting Prime Minister and also Minister of Home Affairs was fully responsible for the incident at Memali.

Paragraph 1 at p. 186

For Musa himself had accepted money from Clement De Cruz.

Paragraph 10 p. 195

Mohamad Rahmat witnessed the payment, so did Ng Eng Tee. Not a cheque, a bank draft. At first Musa asked for cash. How could I give a million dollars in cash. I brought a bank draft.

The defendant would rely on the evidence of one Clement De Cruz who made out the draft of RM1 million on 12 January 1982 at United Malayan Banking Corporation Johore Bahru Branch. The 1st defendant was informed personally of the payment by the said Clement De Cruz.

It is to be noted that the particulars given by the defendants related to only two out of the 12 charges of libel namely (i) that the plaintiff was a cheat, liar, crook, swindler, corrupt, irresponsible and insincere person, and (ii) that he was a murderer of innocent men, women and young children to achieve his ambitions and/or a person with murderous tendencies. In the circumstances the plaintiff was naturally not satisfied with the particulars of the defendants and through his solicitors he applied to the Court for an order that the defendants be directed to give further particulars to sustain their defence under para. 6 of their statement of defence. At the hearing of the plaintiff's application a consent order was made by the Court directing the defendants to give further particulars requested by the plaintiff failing which the defendants would be barred from relying and/or adducing evidence in rebuttal to the matters raised by the plaintiff in para. 4 of the statement of claim. Notwithstanding the consent order the defendants still failed to furnish any further particulars relating to the remaining charges of libel. At the hearing of this case the Counsel for the plaintiff reminded this Court that as the defendants had failed to furnish the further particulars they were restricted to adduce evidence relating only to the plaintiff being a cheat, liar, crook, swindler and a corrupt and/ or he had a tendency to commit murder. To this proposition Counsel for the defendants quite correctly conceded.

In view of the stand adopted by the defendants it is appropriate that I should first deal with the charge advocated by the defendants that the plaintiff was a murderer (hereinafter referred to as "the first charge"). The plaintiff had set out in para. 3 of his statement of claim the original words in Bahasa Malaysia. The English translation of the words were made by the High Court interpreter and the translation also appeared in the statement of claim. The Counsel for the defendants had not seriously challenged the correctness of the translation. The words used by the defendants relating to the first charge according to the plaintiff could be found in the following pages and paragraphs of the book which I need to reproduce only the more pertinent words used therein:

Paragraphs 7 and 8 of p. 42 and paras. 1 to 7 of p. 43:

From the time Musa resigned right up to today UMNO has never known peace. UMNO members seem bewildered. The atmosphere throughout the country is devoid of peace and tranquility.

So long as Musa is not expelled from UMNO, so long will UMNO members bear the sins that Musa has committed. Datuk Musa is responsible for the killing of 14 innocent Muslims in Memali. Who was the Home Minister at that time of the incident? Once again I quote a PAS memo for those crazy for a fight have short memories.

a It is these sins of Musa's that have caused our country to suffer a long drought and all the people to feel uneasy. Is it right that one who has been involved in the massacre of innocent people should be given support and made a leader? Let not our failure to get seats and projects lead us to sell our honour.

It is Musa who was responsible for the killing of innocent children and old folks. It is right that you should protect one who should be punished in accordance with his sins?

b *Paragraph 2 p. 45*

Just wait till Ku Li becomes President and Prime Minister and see what Musa and his friends will do to Ku Li. It may well be more terrible than what is being done to Mahathir. How could we make friends with desperados. If they cannot kill Ku Li politically who knows, they may follow the style of Datuk Mokhtar Hashim. This is not impossible Musa is capable of doing this. Who took the lives of innocent Muslims in the bloody Memali Incident? What
c wrong had the old folks and children done, that Musa should direct the police to shoot them.

Paragraphs 3 and 4 p. 87

I wonder what Datuk Musa had in mind at the time. We cannot fathom the recesses of his mind. Perhaps he was afraid of the symbol of the Malays because he had committed many treacherous acts. As Home Minister he had prohibited the keeping of the kris, the tombak
d (traditional Malay spear) and other weapons what are part of the Malay heritage in private homes. He directed the police to kill innocent Malays in Memali. It can be said that he was a law unto himself and did as he pleased.

Paragraphs 5 and 6 at p. 88

When the police killed 18 Muslims in Memali, the world was shocked - including the Prime Minister. Why? the Prime Minister himself had no idea such a terrible thing would happen.
e Musa told nobody that he had directed the police to kill the Muslims.

He did not tell Dr. Mahathir nor UMNO's political bureau. Ask Musa when he told the political bureau about it. If the political bureau did not know, and the UMNO President did not know who knew about it? Who dared to make this evil decision. Only Musa Hitam. He was a very powerful Home Minister. He alone made the decision to kill the Muslims.

f Before I proceed to consider whether the aforesaid words amount to defaming the plaintiff, it is appropriate at this juncture to examine the law on defamation. I think that it is useful to remind myself of the following words of the House of Lords in *Macintosh v. Dun* [1908] AC 390 at 398.

The law with regard to the publication of information injurious to the character of another is well settled. The difficulty lies in applying the law to the circumstances of the particular
g case under consideration.

However that may be *Gatley on Libel and Slander* 8th Edn. at para. 4 says:

There is no wholly satisfactory definition of a defamatory imputation. Any imputation which may tend "to lower the plaintiff in the estimation of right-thinking members of society generally," "to cut him off from society," or "to expose him to hatred, contempt or ridicule,"
h is defamatory of him. An imputation may be defamatory whether or not it is believed by those to whom it is published. Where, as in the cases of libel and of slander actionable *per se*, the publication of the matter containing the defamatory imputation is actionable without proof of damage, the law will presume that some damage flows from such publication. An imputation may be defamatory whether or not it is true; conversely, untruth alone does not render an imputation defamatory.

i

In para. 14 of the same book a guideline is given as to how the Courts should approach possible cases of defamation. There it is stated:

> The Courts approach possible cases of defamation by asking whether there was publication, was it libel or slander, and if the latter did it fall within the various closed categories of exception to the need for special damage, was there a defamatory imputation, was it justified, did it attract privilege, whether absolute or qualified, was it fair comment, or published innocently, and was a defence of fair comment or qualified privilege defeated by malice? The Courts will ask whether the defendant authorised an actionable publication, or was vicariously liable for it.

In the present case there is no doubt that there had been publication of the alleged offending words in permanent form. There is also no doubt that the words referred to the plaintiff. The next matter to decide is whether the words were defamatory of the plaintiff. On this point it is stated by the Privy Council in *Gordon Berkeley Jones v. Clement John Skelton* [1963] 1 WLR 1362 at 1370.

> The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words. See *Lewis v. Daily Telegraph Ltd.* The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words. The test of reasonableness guides and directs the Court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.

This passage was cited with approval by Thean J in *J.B. Jeyaretnam v. Goh Chok Tong* [1985] 1 MLJ 334 at 336. Lord Reid in *Lewis v. Daily Telegraph Ltd.* [1964] AC 234 adopted a similar approach when he said at p. 258:

> There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of wordly affairs.

Lower down in the same page his Lordship went on to say:

> What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning. Here there would be nothing libellous in saying that an inquiry into the appellants' affairs was proceeding: the inquiry might be by a statistician or other expert. The sting is in inferences drawn from the fact that it is the fraud squad which is making the inquiry.

In *Capital & Counties Bank v. Henty* [1881-1882] Vol. VII App. Cases 741 & 771 Lord Blackburn defined an actionable libel more lucidly:

> A libel for which an action will lie, is defined to be a written statement published without lawful justification, or excuse, calculated to convey to those to whom it is published an imputation on the plaintiffs, injurious to them in their trade, or holding them up to hatred,

> contempt, or ridicule. It must be shewn by evidence that there was a writing, and that it was published. I shall afterwards say something as to what publications are privileged, so as to afford a lawful justification or excuse for the publication, though calculated to convey a libellous imputation. But, independently of all questions as to privilege, the manner of the publication, and the things related to which the words are published, and which the person publishing knew, or ought to have known, would influence those to whom it was published in putting a meaning on the words, are all material in determining whether the writing is calculated to convey a libellous imputation. There are no words so plain that they may not be published with reference to such circumstances, and to such persons knowing these circumstances, as to convey a meaning very different from that which would be understood from the same words used under different circumstances.

In short the test is whether, under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libellous sense. The test is objective and not subjective and the question is what do the words mean as words and not what the defendant in his own mind meant by them or intended to mean. Furthermore the fact that the person to whom the words were published might not believe them to be true is irrelevant and does not affect the right of action although it may affect the question of damages - see *Morgan v. Odhams Press Ltd.* [1971] 2 All ER 1156 at 1168, 1169. The words must of course be considered in the context of the whole speech made by the defendant under the circumstances.

Applying the test laid down in the cases cited above I have no doubt at all that the words used in the several paragraphs in their natural or ordinary meaning are defamatory of the plaintiff in that they convey an imputation to injure the plaintiff's reputation in the calling or office held by him as well as an imputation to lower him in the estimation of others. They set up the plaintiff as a murderer or a person capable of committing or as having the tendency to commit murder to achieve his ambitions. The sting is in the inferences drawn from the facts that it was the plaintiff who directed the police to kill the innocent victims and that he was a law unto himself and did as he pleased and that he alone made the evil decision to kill the Muslims. The effect of the words used by the defendants here are best described by this passage appearing in *Smith's Newspaper Ltd. & Anor. v. Becker* [1932] 47 CLR 279 at 296:

> The article was expressed *extravagantly and was overcharged with epithets, hyperboles and rhetorical questions; but it contained the imputations that the respondent, being unqualified, had caused many deaths* by the administration of atophan which, notwithstanding that he knew it to be a dangerous preparation likely to cause much suffering and death, he had prescribed extensively as a nostrum among an ignorant German population, to whom he had pretended that he was a doctor from their own country of exceptional skill and attainments, although he concealed his previous history and the cause of his leaving Germany, which would be found to be discreditable. Among the judicious the credit of the allegations contained in the article would be much weakened by the intemperance and boisterous irresponsibility of its style. *But among the large classes of uncritical readers who are attracted by such "revelations," exuberance of denunciation is understood to produce a confused confidence that villainy has been unmasked.* With the person upon whom such an attack is made the vulgarity of the vituperation must embitter the insult; and injury is exaggerated with insult. (Emphasis supplied).

The words used by the defendants here as understood by reasonable men to whom they were published have the same effect as described by the aforesaid passage in the Becker case.

The next matter to consider is the defence of justification and fair comment.

It has been said that the plaintiff has established a *prima facie* cause of action as soon as

he has proved the publication of defamatory words. It is no part of the plaintiff's case in an action for defamation to prove that the defamatory words are false, for the law presumes in his favour - see *Belt v. Lanes* [1882] 51 LJ QB at p. 361. It is however a complete defence to an action of libel that the defamatory imputation is true. The onus of proving the truth of the defamatory imputation is on the defendants. It is not enough for them to prove that they believed that the imputation was true even though it was published as belief only. The leading case of *E. Hulton & Co. v. Jones* [1910] AC 20 lends support to this proposition. The House of Lords said in that case at p. 23:

> It consists of using language which others knowing the circumstances would reasonably think to be defamatory of the person complaining of and injured by it. A person charged with libel cannot defend himself by shewing that he intended in his own breast not to defame the plaintiff, if in fact he did both. He has none the less imputed something disgraceful and has none the less injured the plaintiff. A man in good faith may publish a libel believing it to be true, and it may be found by the jury that he acted in good faith believing it to be true, and reasonably believing it to be true, but that in fact the statement was false. Under those circumstances he has no defence to the action, however excellent his intention.

Again in *Jones v. Skelton* (supra) it is said at pp. 1378 and 1379 that:

> If a defendant chooses to justify them he takes upon himself the burden of proving justification... if the communication were a statement of facts and the facts were untrue a plea of fair comment would not avail and it is for the jury to decide what is comment and what is fact but the pre-requisite to their right is that the words are capable of being a statement of a fact or facts.

In considering the defence of justification and fair comment I have not overlooked the provisions of ss. 8 and 9 of the Defamation Ordinance 1957 which provisions render the burden of proving justification and fair comment less strict. The two sections read:

8. *Justification*

> In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

9. *Fair comment*

> In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

The scope of s. 8 of the Defamation Ordinance 1957 has been considered by our then Federal Court in *Abdul Rahman Talib v. Seenivasagam & Anor*. [1966] 2 MLJ 66.

The first defendant in that case in his defence pleaded qualified privilege, fair comment and justification. The trial Judge held that the defence of qualified privilege failed but that the defendant's defence of justification succeeded. In upholding the judgment of the trial Judge Barakbah CJ Malaysia said at p. 77:

> The most important of the documentary and other evidence on which the first defendant relied was the second defendant's statement as set out in Appendix "A". It was conceded by all parties that, in order to justify, the first and second defendants had to discharge the onus of establishing substantially the truth of the words contained therein. In the opinion of the

trial Judge the defendants had succeeded in justifying by proving as substantially true the whole of the words contained in Appendix "A", with the exception of para. 18 relating to the payment of cash to the plaintiff.

There were two main charges against the plaintiff, one being the receipt of two sums of money and the other being receipt of favours. The learned Judge had found that he did receive favours, but not money, and he came to the conclusion that, although the defendants had failed to prove the truth of the charge relating to the money, the imputation in that respect did not materially injure the plaintiff's reputation, having regard to the truth of the rest of the charges. In my own view the Judge had drawn proper inferences from proved facts, and taking the evidence in this case as a whole and on the balance of probabilities, I have to come to the same conclusion that the defence of justification must succeed. Accordingly the appeal is dismissed with costs.

Reverting to the charge of the plaintiff being a murderer or a person capable of committing murder or having a tendency to commit murder the statements of facts alleged by the defendants to my mind are:

(1) not only was the plaintiff responsible for the murder of innocent victims in the Memali incident in his capacity as a Minister of Home Affairs, it was he who took the law in his own hands to direct the police to kill the innocent victims;

(2) the defendants also said that if and when Ku Li should be appointed as President of UMNO and Prime Minister it was possible that the plaintiff would adopt the style of Datuk Mokhtar Hashim (whom everyone knows was convicted of murdering his political opponent) to finish off Ku Li in order to achieve the plaintiff's ambition to become President of UMNO and thereafter to become the Prime Minister; (words in parenthesis supplied).

(3) the killing of the victims was done by the plaintiff without the knowledge of the Prime Minister or anyone else. It was his own evil decision.

The defendants thereupon commented that in the circumstances it was not right at all to protect the plaintiff or appoint him in any post in UMNO since he should be punished for his sins.

In the circumstances of this case there is not even an iota of evidence to support the truth of the statements of fact alleged by the defendants. The plaintiff had said in his evidence that he did not give any instruction or directive to the police to resort to shooting. His evidence is corroborated by the White Paper published by the Government as Kertas Perintah 21 Tahun 1986 entitled the Memali Incident, the English version of which was tendered and marked as Exhibit P2A. There is no doubt that the White Paper had been widely circulated and the persons who read it would agree that not only did it exonerate the plaintiff of any blame it also exonerated the police from any liability. The White Paper clearly showed that the police had done everything they could to avoid using firearms but the situation was such that they could not but resort to shooting in self defence after they were ambushed by a group of Ibrahim Mahmood's followers resulting in the killing of an inspector and a sergeant and the wounding of a constable. Yet the first defendant did not mention anything in the book about the contents of the White Paper although he had read the said Paper. The first defendant's excuse for not mentioning the contents of the White Paper in his book was because as the White Paper was never debated in Parliament and the Government did not think it fit to appoint a Royal Commission to investigate into the matter he refused to accept the contents of the White Paper as true. He went on to say in his evidence that as Minister of Home Affairs the plaintiff should be held responsible for the killing. But the words used

by him in the book went further than that - he blatantly accused the plaintiff for taking the law in his own hands to direct the police to kill the innocent victims which of course is absolutely not true. That being the case he had no basis whatsoever to make the comment which he did. This proposition is reinforced by the following passage of *Lord Finlay* in *Sutherland v. Stopes* [1925] AC 47 at 62-63 where it was said:

> The averment that the facts were truly stated is merely to lay the necessary basis for the defence on the ground of fair comment. This averment is quite different from a plea of justification of a libel on the ground of truth, under which the defendant has to prove not only that the facts are truly stated but also that any comments upon them are correct.

Although the speech of Lord Finlay was made prior to the passing of s. 6 of the English Defamation Act 1952 which is *in pari materia* with s. 9 of our Defamation Act 1957, which I have cited earlier, and which has rendered the burden of proving fair comment less strict nevertheless the proposition of Lord Finlay aptly applies to the present case bearing in mind that the offending words used in the various paragraphs of the book and the particulars given by the defendants to sustain their defence of justification and fair comment are so extravagantly abusive.

The next matter which I have to consider is whether the publication of the said words attract privilege whether absolute or qualified. The Counsel for the defence, quite correctly, conceded that the defendants are not relying on the defence that the publication of the said words was made in an occasion of either absolute or qualified privilege. I say 'quite correctly' because although the defence of privilege was pleaded the facts necessary to show that the occasion was privileged were never stated - see para. 1127 of *Gatley on Libel and Slander* 8th Edn.

However that may be even assuming that words used amount to a fair comment or protected by qualified privilege the next question to be asked is whether such defence has been defeated by malice. There is no doubt a long line of English cases dealing with the scope of malice. I need only to refer to three of them. The first case is *Adam v. Ward* [1917] AC 309 where the following passages are quite apt and instructive:

Page 318:

> Malice is a necessary element in an action for libel, but from the mere publication of defamatory matter malice is implied, unless the publication was on what is called a privileged occasion. If the communication was made in pursuance of a duty or on a matter in which there was a common interest on the party making and the party receiving it, the occasion is said to be privileged. This privilege is only qualified and may be rebutted by proof of express malice.

Page 326:

> Malice, which is of the essence of libel, is presumed from defamatory words. Privilege destroys that presumption. But the place of the implied malice which is gone may be taken by express malice which may be proved. ***It may be proved either extrinsically or intrinsically of the document, and such words in the documents are apt as evidence.*** (Emphasis is mine).

Page 335:

> The question then arises, whether the language is too strong for the occasion; the terms applied to the plaintiff's conduct being 'most disgraceful and dishonest.' Now, the communication being privileged, the presumption is in favour of the absence of malice in the defendant, and in order to rebut this presumption, the plaintiff must show actual malice, and he may no doubt show this by reference to the terms of the libel as being utterly beyond and disproportionate to the facts.

Page 339:

> On the contrary, he will be protected, even though his language should be violent or excessively strong, if, having regard to all the circumstances of the case, he might have honestly and on reasonable grounds believed that what he wrote or said was true and necessary for the purpose of his vindication, though in fact it was not so.

The second case is *Slim & Ors. v. Daily Telegraph Ltd. or Ors.* [1968] 2 QB 157 and the pertinent passage of the judgment appears at p. 170:

> If he was an honest man expressing his genuine opinion on a subject of public interest, then no matter that his words conveyed derogatory imputations: no matter that his opinion was wrong or exaggerated or prejudiced; and no matter that it was badly expressed so that other people read all sorts of innuendoes into it; nevertheless, he has a good defence of fair comment. *His honesty is the cardinal test. He must honestly express his real view.* So long as he does this, he has nothing to fear, even though other people may read more into it, see per *Lord Porter* in *Turner v. M.G.M. Pictures Ltd.* and per Diplock J in *Silkin v. Beaverbrook Newspaper Ltd.* I stress this because the right of fair comment is one of the essential elements which go to make up our freedom of speech. We must maintain this right intact. It must not be whittled down by legal refinements. When a citizen is troubled by things going wrong, he should be free to "write to the newspaper": and the newspaper should be free to publish his letter. It is often the only way to get things put right. The matter must, of course, be one of public interest. *The writer must get his facts right: and he must honestly state his real opinion.* (Emphasis is mine).

The most informative exposition of the scope of malice can be found in the more recent case of *Horrocks v. Lowel* [1975] AC 135 where Viscount Dilhorne said at p. 145:

> If a man abuses a privileged occasion by making defamatory statements which he knows to be false, express malice may easily be inferred. *If, on such an occasion, he makes statements recklessly, not caring whether they be true or false, again malice may be inferred.* Such recklessness may be induced by anger, as Lord Esher MR pointed out in *Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson* [1892] 1 QB 431, 444. Lord Esher MR went on to say that gross and unreasoning prejudice:
>
> > ...not only with regard to particular people, but with regard to a subject matter in question, would have the same effect. *If a person charged with the duty of dealing with other people's rights and interests has allowed his mind to fall into such a state of unreasoning prejudice in regard to the subject matter that he was reckless whether what he stated was true or false, there would be evidence upon which a jury might say that he abused the occasion.* (Emphasis supplied).

His Lordship, however, elaborated this aspect of the law further by saying (pp. 145-146):

> Can a man who believes what he says on a privileged occasion to be true and which ***if true*** would not be an abuse of the occasion be held to have made his statements "recklessly whether they are true or false"? Gross and unreasoning prejudice may have led him to have uttered them recklessly whether they were true or false, but if he believes the truth of what he said, can he at the same time be said to be reckless of the truth or falsity of his statements? *May be that others with more judgment and more wisdom would not have formed the same belief, but if, in fact, he believes what he says, he cannot at the same time, in my opinion, be reckless whether it is true or false. Such recklessness falls short of deliberate falsehood. But such recklessness, not minding or caring whether it be true or false, whether it arises from anger or unreasoning prejudice, or from some other cause, is not consistent with belief in the truth of the statement.*

In *Watt v. Longsdon* [1930] 1 KB 130, Greer LJ said, at p. 154:

> A man may believe in the truth of a defamatory statement, and yet when he publishes it be reckless whether his belief be well founded or not. ***His motive for publishing a libel on a privileged occasion may be an improper one, even though he believes the statement to be true.*** (Emphasis supplied).

In the same case Lord Diplock defined "express malice" in this way (see pp. 149-150):

> Broadly speaking, it means malice in the popular sense of a desire to injure the person who is defamed and this is generally the motive which the plaintiff sets out to prove. *But to destroy the privilege the desire to injure must be the dominant motive for the defamatory publication; knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in bona fide protection of his own legitimate interests.*
>
> *The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice, for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another*, save in the exceptional case where a person may be under a duty to pass on, without endorsing, defamatory reports made by some other person.
>
> Apart from those exceptional cases, what is required on the part of the defamer to entitle him to the protection of the privilege is positive belief in the truth of what he published or, as it generally though tautologously termed, "honest belief." *If he published untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false.* But indifference to the truth of what he publishes is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true. (Emphasis supplied).

The *ratio decidendi* of *Horrocks v. Lowe (ante)* has been briefly explained by the Privy Council in *J.B. Jeyaretnam v. Lee Kuan Yew* [1982] CLJ (Rep) 38 at 42 in this way:

> Such a submission ignores the evidence in the case and the findings of both Courts. For if one thing is perfectly clear in the frequently complex law of defamation it is that no defence of qualified privilege or fair comment is available to a defendant who has knowingly and falsely defamed another. Honesty is the indispensable basis of such defences, and the *ratio decidendi* of *Horrocks v. Lowe (ante)* was simply that the trial Judge's finding that the defendant honestly believed he was speaking the truth could not be reconciled with another finding that he was nevertheless actuated by express malice.

Applying the principles enunciated in the above cited authorities to the present case, it is highly incredible that the 1st defendant could have "honestly believed" that the plaintiff personally directed the killing of the victims in the Memali incident. The 1st defendant deliberately ignored the factual situation of the Memali incident; he was indifferent to the circumstances that gave rise to the said incident. His dominant purpose was to sensationalise the said incident in order to sustain the unsustainable allegations which he asserted against the plaintiff. It is important to note that what he said in his evidence *viz* that the plaintiff being the Minister of Home Affairs should accept the responsibility for the killing of innocent Muslims cannot be reconciled with the statements he made in the book. Furthermore he turned a blind eye to the White Paper and took upon himself to require the Parliament to question what has been said in the said paper or to set up a Royal Commission of Inquiry to look into the Memali incident. There is absolutely no evidence before this Court to show that any of the Members of Parliament, who are the rightful representatives of the people, had moved Parliament to debate on the White Paper or that anyone had suggested the setting up of a Royal Commission. Under the circumstances his sensationalisation of the Memali

incident is motivated not by an honest belief of what he had said but rather by an ulterior motive to justify himself as a writer who believed in stating "apa yang benar dan apa yang hak" (see para. four of p. 3 of the book). It is also momentous to note that he published or caused to be published the book about 38 days prior to the UMNO General Assembly general election. It is therefore not inherently incredible that he used the occasion to enhance the sale of his book and also his reputation as writer. The front cover bearing the photographs of the plaintiff and Tengku Razaleigh Hamzah together with the title Siapa Lawan Siapa would certainly attract a vast number of peoples regardless of race or political affiliation to read the book at the material time. This is substantiated by the evidence of PW4, a well-known distributor of all types of books, who said that "the sale of the book (was) quite extraordinary and it could be helped by certain event (referring to the UMNO general election)."Another factor that should be taken into consideration is that although it has been provened that at least 18,000 copies of the book had been sold it does not necessarily mean that only 18,000 persons had read the book prior to the UMNO General Assembly. It is an acknowledged fact of which this Court can take cognisance that members of the family and close friends of a buyer of the book would have also read it. It is also in evidence that the book was openly brandished by members of the delegation to the UMNO General Assembly. It is therefore fair to say that the book would have reached a wider audience not only in Johor but also in other States in West Malaysia. Finally the 1st defendant admitted that he also had in hand for publication the English translation of the book. But the English translation of the book was not published because of the injunction obtained by the plaintiff to restrain him from doing so. This factor again reinforced the proposition that the intention of the 1st defendant to publish the book containing untrue allegations of the plaintiff is solely to advance his ambition as a reputable writer and the sale of the book at the expense of the reputation of the plaintiff. It is true that the first defendant in his evidence said that he honestly believed that what he stated in the book were true. But, to my mind, his evidence cannot be reconciled with the totality of the evidence which clearly indicates that his assertion is inherently incredible.

In the ultimate analysis I am fully satisfied that the charge of libel purported to expose the plaintiff as a murderer or a person capable of committing or having a tendency to commit murder is absolutely defamatory of the plaintiff and the defence of the defendant of justification, fair comment and qualified privilege has no merits. One has only to read the words used in the relevant paragraphs cited above relating to this charge to note the degree of venom and hostility shown therein.

Turning now to the second charge alleging that the plaintiff was a cheat, swindler, corrupt and untrustworthy person, the plaintiff has likewise set out in para. 3 of his statement of claim the original words in Bahasa Malaysia and the authorised and undisputed English translation thereof. The words used by the defendants relating to this charge according to the plaintiff are to be found in the following pages and paragraphs of the book which again I need only to re-produce the more pertinent words used therein:

Title of Chapter 15 at p. 23:

Musa pockets several millions.

Paragraphs 2, 3 and 4 of p. 183.

Among the many stories there is one that a number of people have told me, that Musa once received RM1 million given to him as donation for Johor UMNO. But Musa pocketed the money. This is indeed a delectable tale. So Musa is not just a traitor but has also become a

toyol (a spirit who steals money) who pockets people's money. This pocketing business is the work of a toyol. The toyol usually steals small sums. But this is RM1 million no small sum.

A delectable tale, yes, but in a case like this I cannot just believe the story. Even though I know Musa is a crook. If I want to say such a thing, I must have proof. I know that to prove such a thing is not easy. But difficult though it is, I must do it. If I don't do it, who will. I can't rely on Johor UMNO members, they are all scared of Musa.

Paragraph 1 at p. 186.

Clement D'Cruz was even more so than Musa, for Clement D'Cruz has given Ajib money and all sorts of other things that Ajib often asked from him. Musa cannot give Ajib anything. For Musa himself has accepted money from Clement D'Cruz.

Paragraphs 11 and 12 p. 191 - answer of D'Cruz to question put to him by 1st defendant.

It (Holiday Plaza) belongs to Dapat and Dapat is now owned by Ng Brothers. UMNO no longer has shares there. During my time UMNO had a 30% share through merger between Bakland and Dapat. Now UMNO has nothing there. 100% Ng Brothers. They are smart. I know they gave Musa several millions.

Paragraphs 10 at p. 195 and paras. 1, 4 and 5 at p. 196 - answers by D'Cruz to questions put to him by 1st defendant:

Mohamed Rahmat witnessed it (handing over the RM1 million cheque to Musa) so did Ng Eng Tee. Not a cheque a bank draft. At first Musa asked for cash. How could I give a million dollars in cash. I brought a bank draft.

What corruption? I was forced to give it. How could that be corruption? If I weren't forced why should I give a million dollars?

The facts and matters relied upon by the defendants in their defence against this second charge have been fully set out earlier. It is unnecessary for me to repeat them except to say that the gist of those facts and particulars is this: At first Musa asked for RM 1 million in cash but ultimately it was agreed that the payment be made by bank draft. Musa himself accepted the bank draft of RM1 million made out by Clement D'Cruz on 13 January 1982 and this was witnessed by two persons namely Mohamed Rahmat and Ng Eng Tee. The defendants also asserted that they would rely on the evidence of Clement D'Cruz as it was he who personally informed the 1st defendant of the payment of the RM1 million.

I shall now advert to the evidence. As the evidence of the witnesses in this aspect of the case is quite lengthy (it scatters over some fifty pages of the Notes of Proceeding) I do not propose to set out in full the evidence of each of the witnesses simply because not only will it unnecessarily lengthen this judgment but in any case I have scrutinised the totality of the evidence with care. It is sufficient for me therefore to set out a concise and specific version of the evidence of each of the witnesses relating to this second charge. First the evidence of the plaintiff. He was elected to the post of Deputy President of UMNO from 1981 to 1987 and he was also given the post of Chairman of UMNO Johor in 1981. He held that post until 1983. On assuming the office of Chairman of UMNO Johor he was aware that UMNO owned 30% share of a company known as Dapat Sdn. Bhd. (Dapat). He also knew that Dapat owned a piece of 10-acre land on which the Holiday Inn and Holiday Plaza of Johor Bahru are now located. The project of the construction of Holiday Inn had been carried out well before the plaintiff became the Chairman of UMNO Johor. His concern over Dapat was to see that it was legally constituted and that it was carrying out legitimate business.

He was not concerned with the detailed dealings and investments of Dapat as all such matters were the responsibility of specific officers nominated to look after such matters. It was, however, within his knowledge that the managing director of Dapat was one Clement D'Cruz but he had no knowledge of the background or personal particulars of this person since D'Cruz had been appointed managing director before the plaintiff assumed the office of Chairman of Johor UMNO. Some time in 1982 Clement D'Cruz approached him with an offer to donate a sum of RM1 million to UMNO Johor. The plaintiff said that knowing UMNO had an interest in Dapat, he told Clement D'Cruz that whatever moneys he wanted to donate to UMNO Johor would be regarded as merely the transfer of funds from the business arm of the UMNO party to the political body of UMNO. It was within this context that he was willing to accept the sum of RM1 million. At first Clement D'Cruz proposed to pay the sum in cash but the plaintiff refused to accept cash and insisted that the payment should be made in cheque payable to UMNO Johor. He met Clement D'Cruz about two or three times concerning this matter. Finally Clement D'Cruz handed over to the plaintiff a cheque for a sum of RM1 million made payable to UMNO Johor in the presence of the then Treasurer of UMNO Johor. The plaintiff then passed the cheque over to the Treasurer to deposit it in the Johor UMNO banking account. When asked whether he knew that the payment of the RM1 million was questioned by a Member of Parliament of the opposition party and that Ooi Gin Sun a government Member informed the House that the matter was being investigated by the Anti Corruption Agency (ACA) the plaintiff replied that he was not in Parliament at the material time and therefore he was not aware of the matter. The plaintiff emphasised that the payment of the RM1 million was nothing more than a transfer of funds from the business arm of UMNO as a shareholder of Dapat to the political body of UMNO. Dapat was at that time "a rather big company" and whatever profits it made should be shared and distributed to the shareholders. The payment of that sum was certainly not a gift or reward for any favour whatsoever. There was, however, an occasion when Clement D'Cruz came to see the plaintiff to ask for approval to develop some land to which the plaintiff immediately dismissed him and advised him to apply for whatever project he wanted through the proper channel. The plaintiff did not even bother to discuss the details of the project and dismissed Clement D'Cruz's request immediately upon learning what the latter wanted. As regards to the project of the construction of the Holiday Inn on the 10-acre land of Dapat the plaintiff advised the Johor UMNO Committee to disassociate UMNO from participating in the project after the opposition party in Johor Bahru took the matter up as a political issue. The plaintiff himself went to inspect the land and thereafter he recommended that UMNO should 'cut off' any dealing with the project. This obviously would incur losses to UMNO but he had to make the recommendation in order to ensure that the good name of UMNO Johor could be maintained. The plaintiff ceased to be the Chairman of UMNO Johor in 1983 and he could not say whether his recommendation was implemented by the Johor UMNO committee. The plaintiff also asserted that the offending paragraphs certainly were unjustified and unwarranted and merely set up to defame him. In cross examination he again said that all the allegations against him were not true.

Turning to the evidence of the 1st defendant he reiterated that what he had stated in the book in Chapter 15 bearing the headline "Musa Kebas Beberapa Juta" were true. He was personally informed by Clement D'Cruz about the payment of the RM1 million. Unfortunately he could not get Clement D'Cruz to testify as the latter is no longer in the country and the 1st defendant does not know where to look for him. Furthermore most of the witnesses who knew about the transaction had disappeared as they were afraid to testify against the plaintiff.

The defendant then referred to *Chapter 15 as part of his evidence.* I do not propose to reproduce the contents of the whole of the Chapter 15 as a great part of it consists of evidence which is irrelevant to the charge. I need only give the gist of the contents of chapter 15 which is relevant to the charge or relevant to the defence of justification and fair comment. In that chapter the writer started off by stating that after the publication of his earlier book entitled Musa Derhaka? - Musa a Traitor?, he received comments from many readers; some criticising him while others praising him. Some readers also informed him that Musa had received a sum of RM1 million as donation for Johor UMNO. But according to him "duit itu telah dikebas oleh Musa." He went on to state that Musa was not only a traitor but like "a toyol" he also pocketed money. The writer then went on to say that he could not believe the information even though he knew that Musa was a crook. He therefore had to look for evidence to prove the payment of the sum of money. He first went to see Dato Mohamed Rahmat who confirmed that he saw the cheque for the sum of RM1 million being handed over to Musa. However Dato Mohamed Rahmat told the writer to see Clement D'Cruz in Singapore who would be able to give him details of the transaction. Before the writer set out the details of his interview with Clement D'Cruz, he told the readers that Clement D'Cruz was a very religious man. He was a good Christian and whenever he said anything he would often refer to the Bible. The writer then gave an account of his interview with Clement D'Cruz. The interview was conducted in the form of questions put by the writer and the answers given by Clement D'Cruz.

Counsel for the plaintiff in his submission urged me to reject the statements of Clement D'Cruz as appeared in the book on ground of 'hearsay' since he was not called to testify. With due respect I have my doubt as to the proposition of the learned Counsel since it is provided in s. 32 of the Evidence Act 1950 that statements made by a person under the circumstances stipulated in that section one of which is that when the person who made the statements could not be found his statement may be admissible and in the present case it has been established that Clement D'Cruz is no longer in the country and he cannot be located. However that may be the statements of Clement D'Cruz can be admissible if, and only if, they relate to relevant facts. The major consideration regarding the admissibility of the statements of Clement D'Cruz therefore is whether what he said are relevant to the second charge made by the plaintiff. It may be recalled that from the words used in the various pages and paragraphs of the book as set out earlier the plaintiff charged the first defendant for portraying him as a cheat, swindler, corrupt, irresponsible and insincere person. That being the case I can only allow the statements of Clement D'Cruz to be admitted if, and only if, it is relevant to words relied upon by the plaintiff to sustain the second charge. This proposition is supported by the following passage from *Gatley on Libel and Slander* 8th Edn., para. 354:

> The defendant must prove the truth of the very imputation complained of; he may not under a plea of justification prove the truth of other facts damaging to the plaintiff's reputation, even if they are in the same sector of the plaintiff's life, and would be no less damaging to the plaintiff's reputation than the imputation complained of. Where the defendant has made a general charge, or where an apparently specific charge has a more general defamatory sting, the defendant may justify what he has said by proving specific facts which show that what he has said is substantially true. Where the defendant has made a specific charge of wrongdoing, he must prove the truth of that charge, and of no other; but in spite of discrepancies in detail, such as date or place, he may still succeed unless what he seeks to prove amounts to a different charge or refers to a different occasion.

The comment of the author is acknowledged by judicial decisions on this aspect of the law. Thus in the case of *Wernher Beit & Co. v. Markham* [1901-1902] Vol. XVIII p. 143 the defendant's charge was that the plaintiff company was nothing more or less than thieves and swindlers in connection with the part they had played in financial operations in South Africa and the defendant was judging them by the high code of morality which was followed in England and which was essential to public life. That being the accusation, the defendant had justified it in the following terms in the defence:

> The words complained of in their natural and ordinary meaning are true in substance and in fact.

Having taken the course the defendant came under an obligation to deliver particulars of justification. The plaintiffs objected to some of the particulars and applied to have them struck out primarily on the ground that they were not relevant. In holding in favour of the plaintiffs the Master of the Rolls said at p. 146:

> In the next place, in dealing with a matter like this, where the defendant justified, he was bound, both upon authority and upon clear principles of common sense and justice, to support his justification by facts distinctly stated and material to the issue, and stated with the same particularity as in a criminal charge, because, as had been pointed out, this was a criminal charge against the plaintiffs. The validity of the cause of action depended on it being a criminal charge. The words were "thieves and swindlers." Why should not such a charge be justified with the same particularity as in a Criminal Court? Bearing that in mind, it afforded an answer to some of the arguments to-day. Conceive the case of a man being on his trial in a Criminal Court on a charge of financial swindling, and evidence being tendered that he was a political profligate with the object of gain, how could such evidence be admitted? It was impossible to suppose such a thing.

The Master of the Roll considered that the particulars given by the defendant in his defence of justification amounted to a class of particulars which was simply "an averment of political profligacy, which might be reprehensible in itself but which could not be called swindling and it would be a public scandal to allow such a charge as was made here to be embarrassed by allowing irrelevant and damnatory matter such as that to be introduced". The learned Judge went on to say at p. 147:

> The remainder of the paragraph was pure prejudice. It contained a statement of political dishonesty as a prop for a charge of theft and swindling. Then with regard to para. 5, that amounted, shortly stated, to an allegation that the plaintiffs made political agitation subservient to their personal ends. That was not the charge which the defendant made in his speech against the plaintiffs. The defendant now sought to support that charge by what was, no doubt, also a grave charge, but was not a charge of thieving and swindling in financial operations.

Similar approach is adopted by the House of Lords in *Special v. Plato Films Ltd.* [1961] AC 1091. The brief facts of this case as taken from the headnote show that the plaintiff who was the Supreme Commander of Allied Land Forces in Central Europe, brought an action against the defendants claiming that he had been libelled in a film published and exhibited by them, in which he was depicted as being privy to the murders of King Alexander of Yugoslavia and M. Barthon in 1934 and as having betrayed Field-Marshall Rommel in June 1944. By para. 5 of the defence the defendants pleaded justification. Alternatively, in mitigation of damages they said that evidence in chief would be given at the trial of (A) the circumstances under which the alleged libel was published and (B) as to the plaintiff's character. As particulars of (A) they pleaded that the matters of complaint formed part of the film in which the plaintiff was further depicted as having been guilty of war crimes and atrocities (specific instances of which were given) the truth of which the plaintiff did not deny in his statement of claim. Under (B) the defendants pleaded that the plaintiff

was widely reputed to have been guilty of two acts with which he had been charged in the alleged libel and also of war crimes instanced in (A) and, in addition, of the direction of aspect of Nazi anti-Jewish policy and the suppression of German democratic life. The Court of Appeal held that the particulars given in (A) should be struck out and gave leave for (B) to be amended to read:

> Alternatively in mitigation of damages the defendants will at the trial of the action give evidence in chief that the plaintiff had on or before 19 November 1958, a bad reputation as a man who was a party to and/or responsible for acts which were war crimes and/or against humanity and/or atrocities.

In the Court of Appeal Devlin LJ said at p. 1100:

> We say that this is an attempt to circumvent the rule because it is an attempt to get in specific allegations of misconduct on matters which are not in issue. It does not matter whether the allegations are to be found in the same film as the libel or in some other distinct film or document; unless they are pleased as defamatory and justified, they cannot be gone into.

His Lordship went on to say at p. 1101:

> They imply that there is some obligation on a plaintiff, which there is not, to go through the whole film or book in which a libel is contained and admit or deny the truth of everything in it that is said against him. The sum of the matter is that it is not open to the defendants to assert or to insinuate that these allegations are true: it is not open to them to tender evidence from which it might be inferred that the plaintiff is the sort of man who does not resent defamatory charges because that would be to give evidence of character in the sense of quality or disposition and not of reputation.

In affirming the decision of the Court of Appeal, Lord Redcliffe of the House of Lords said at pp. 1128-1129:

> The second matter of principle turns on this points to which I have alluded, whether evidence of a plaintiff's bad character is to be understood as meaning the character which he bears in public estimation, by which I mean his reputation, or the character which might be attributed to him on a nice assessment of all his actions, if not his thoughts and desires, by which I mean his disposition. In my opinion, character in this context ought to mean the former conception exclusively. No evidence should be admitted which is not directed to that head of proof.

Lower down in the same page His Lordship said:

> Moreover, any rule that made it possible for a defendant to put in evidence by way of mitigation some discreditable action of the plaintiff, irrespective of whether it was publicly known or not and so contributed to his reputation, would be a rule so inherently unfair that it ought not to be accepted.

Lord Denning too upheld the decision of the Court of Appeal. He drew a distinction between allowing the defendant to go into the particular instances of misconduct and allowing the defendant to adduce evidence to show that the plaintiff did not possess the character or reputation of which to the eyes of the general public was beyond reproach. The reason for the distinction was according to Lord Denning well put by Mr. Sarkie in this way (see p. 1134).

> The principle on which such general evidence is admitted, whilst evidence of particular facts is excluded, has been frequently recognised: it is this - that the party may be prepared with general evidence in support of character, though he cannot be supposed to be prepared with evidence to justify his conduct through life.

Lord Denning then went on to give an exposition of the word "character and reputation" at p. 1138:

> A man's character, it is sometimes said, is what he in fact is,whereas his reputation is what other people think he is. If this be the sense in which you are using the words, then a libel action is concerned only with a man's reputation, that is, with what people think of him: and it is for damage to his reputation, that is, to his esteem in the eyes of others, that he can sue, and not for damage to his own personality or disposition.

He, however, advocated that "character" could often be used and quite properly used in the same sense as the word reputation when the character of a person spread outwards from those who knew him and circulated among people generally in an increase range. However that may be Lord Denning accepted that:

> When evidence of good or bad character is given, it should be directed to that sector of a man's character which is relevant. Thus, if the libel imputes theft, the relevant sector is his character for honesty, not his character as a motorist. (*ibid* p. 1140).

I shall now consider the interview between the first defendant and Clement D'Cruz bearing in mind the principles laid down in the cases cited above. At the outset I must say that the story revealed by Clement D'Cruz is disjointed and not in proper order. Questions were put to him haphazardly and his answers were likewise given unsystematically. In the result I find it difficult to follow the chronology of the several transactions and events that were supposed to have taken place as stated by him particularly when no dates were given in his statements. I have to take this point into consideration in my determination of whether the story of Clement D'Cruz lends support to the defence of justification and fair comment. The gist of the contents of the said interview is this. Clement D'Cruz began by giving an account of how he and the Ng brothers of Singapore bought over the company, Dapat which had, as part of its assets, a piece of 10-acre land which was of not much worth. According to him UMNO had no share in Dapat but it had a 30% share in another company known as Bakland Sdn. Bhd. (Bakland) which was incorporated in 1979. Two complexes known as Holiday Inn and Holiday Plaza were constructed on that land and the construction began some time in 1979 and completed some time in 1982. As a result of some sort of a loose arrangement agreed between the shareholders of Dapat and Bakland the two companies were "amalgamated" albeit informally. Clement D'Cruz became the managing director of the two companies.

Clement D'Cruz then alleged that at the request of Musa a certain person (whose name was given) joined the companies and that person together with two other persons in the Companies started to manipulate. The word 'manipulate' is in bold letters suggesting that they were manipulating the funds of the companies. Subsequently when they became friendly with the Ng brothers they ignored Clement D'Cruz who chose to resign as managing director as he was not able to control the management of the companies. He also suggested that as a result of the manipulation and the carrying out of certain transactions detrimental to the Bakland, this company was subsequently wound up. Clement D'Cruz also alleged that amongst the persons who acquired millions of ringgit from Bakland were the person who joined the companies at the request of the plaintiff and another person (name is also supplied) who Clement D'Cruz said was closely connected with the plaintiff (he called him 'the office boy' of the plaintiff). Pausing here to make an observation, it is clear that this part of the version of Clement D'Cruz is inadmissible. It is to my mind highly irrelevant as it has nothing to do with the plaintiff. Even though Clement D'Cruz suggested that these persons were closely associated with the plaintiff nevertheless that by itself is no proof that the plaintiff participated in the manipulation of the companies' funds or had

acquired the millions of ringgit or even a part of the money. Even his statements that these people were closely associated with the plaintiff were only bare statements. He did not deem (sic) to give any reason to support his statements. That being the case his statements can only be based on conjecture, supposition and assumption.

Another part of the version of Clement D'Cruz which is equally irrelevant contains an allegation that the Ng brothers subsequently took over the possession of Holiday Plaza which was originally owned by Dapat. As a result of this taking over UMNO no longer had any share in the said Plaza. He then made this statement: "Saya tahu mereka (Ng brothers) ada bagi duit pada Musa beberapa juta." It is to be noted that this is again a bare statement by Clement D'Cruz - he did not give any details as to why, how and when the "beberapa juta" was given to Musa. In the absence of details the defendants therefore were unable to give particulars of the payment of moneys by the Ng brothers to the plaintiff. That being the case the defendants are precluded from denying the falsity of the said statement. To my mind it is a mischievous attempt to link the plaintiff with the Ng brothers' acquisition of Holiday Plaza. The said statement is therefore of no evidential value.

There are some more allegations of like nature made by Clement D'Cruz. He claimed that persons closely associated with Musa or 'orang-orang Musa' had often demanded money and all sorts of things from him and he had to comply with their demands. He claimed that these persons could not have dared to do things without the plaintiff directing them to do so. He also mentioned that a lawyer friend of the plaintiff rendered services for him. All these to my mind are not only highly irrelevant but also inherently prejudicial to the plaintiff particularly when no detail was given apart from the bare allegations. In any case his payments to the persons whom he believed were orang-orang Musa were based again on conjecture, supposition and assumption. Clement D'Cruz did however say that Musa himself has accepted money from him. Again he did not say when and why did Musa accept money from him. Such a bare allegation without any details is to my mind unacceptable as proof of the truth of the statement when the maker was not called to testify. In any case assuming for a moment that the allegation is true, it can only go to show an isolated instance of misconduct on the part of the plaintiff which tends to establish the disposition of the plaintiff (as defined by Lord Redcliffe in the Speidel case cited earlier) and not his reputation as held by the public. Such an allegation, even if it is true (to which I cannot accede), cannot therefore justify the defamatory imputation made by the defendants against the plaintiff's reputation. On principle and authority I must reject the evidence of the first defendant insofar as the evidence is based on these allegations of Clement D'Cruz.

I now turn to that part of Clement D'Cruz's version of the payment of the RM1 million donation which is the essence of the second charge. Clement D'Cruz said that in 1982 he gave the money to Musa and the money was a donation to Tabung Derma Rumah UMNO Johor. The payment was made by bank draft made out in his name and the payment was witnessed by Mohamed Rahmat and Ng Eng Tee. He claimed that at first Musa asked the payment be made in cash but as it was difficult to get such a large sum of money in cash it was therefore finally agreed that the payment be made in the form of bank draft. He also said that the donation was made by Bakland but as Bakland was not able to produce such a large amount of money Clement D'Cruz had to borrow moneys from various sources in order to purchase the bank draft - hence the bank draft was made out in his name - see pp. 204 and 205 of the book. However Bakland subsequently "bayar balik saya. Jadi duit itu duit Bakland" (see p. 196 of the book). When he was asked whether the payment would be regarded as corruption, he said:

> Apa rasuah? Saya dipaksa supaya bayar. Rasuahkah macam itu? Kalau saya tak dipaksa buat apa saya bagi 1 juta?

He said he was prepared to prove what he said in Court. He was then asked "Selepas itu apa Musa buat?" His answer was: "Favour pertama yang Musa buat, dia benarkan semula grenade di Johor Bahru yang telah diharamkan oleh Othman Saat. Dia kata kepada saya sendiri, kalau Othman Saat tidak setuju, beritahu dia."

From the above discussions it is clear firstly that it was not Clement D'Cruz who gave the donation; it was Bakland. Secondly the donation was made to Tabong Derma Rumah UMNO Johor. Thirdly since the donation was made by Bakland it could not be true that Clement D'Cruz was forced to make the payment; he could very well leave it to the shareholders of Bakland and Dapat to sort out the matter. Fourthly he said that the payment of the RM1 million was to get favour from the plaintiff. One may ask what favour, for whom the favour was made and when was the favour given? Clement D'Cruz had no answers to all these questions.

It is also manifestly clear that the writer was not sure that his general allegations of the cheating, swindling and corruption on the part of the plaintiff was true. Thus he said at p. 196 of the book:

> Boleh jadi ada beberapa perkara atau fakta dalam cerita itu yang tidak begitu jelas atau kurang tepat. Tapi perkara pokoknya mengenai duit satu juta untuk Tabung Derma Bangunan UMNO Johor yang diberikan kepada Musa itu saya cross-check dengan beberapa sumber lagi, itu memang pasti, saya berani bertanggungjawap.

It is to be noted that the cross checking carried out by him was in relation to the RM1 million paid as donation to the said Tabung Derma. Although he had reason to believe that some of the things and statements made in the Chapter 15 might not be correct and required clarification still he was not prepared to find out the truth or otherwise of the things and statements. The writer then relied on the question raised in Parliament on 5 November 1986 (see Exhibit D7 - Parliamentary Debates of 5 November 1986) where the opposition leader questioned the Prime Minister *inter alia* whether any investigation was carried out by ACA regarding the plaintiff receiving the bank draft of RM1 million from Bakland and Dapat to which the Deputy Minister of the Prime Minister Department Datuk Ooi Jin Sun replied in the affirmative, to ask the question: Ke manakah pergi duit RM1 juta yang diserahkan kepada Musa itu? He also said that he would be prepared to search for evidence and clarification to prove the misconduct of the plaintiff. Finally it is important to note that in answer to a question put to him by Counsel of the plaintiff in cross examination he said: "I agree that in a situation like this I am not concerned with that a person's reputation is harmed or jeopardised." An analysis of the evidence of the 1st defendant clearly shows that apart from his finding that the RM1 million was paid as donation to the said Tabung Derma the rest of what he had stated in Chapter 15 were based on conjectures and supposition which he himself could not have honestly believed to be true.

I shall now advert to the evidence of DW5 who is the Senior Investigation Officer attached to the Anti Corruption Agency Selangor (ACA). The relevant part of his evidence is as follows. In 1981 he was assigned by the then Director of ACA Johor to investigate into the affairs of Bakland and Dapat. He said he did not complete the investigation. He had only started the investigation when he was stopped by Director General of the ACA Malaysia from proceeding further; he was told to close the case. From his short-lived investigation he knew that UMNO had 30% share in Bakland. Clement D'Cruz was the managing director of

both Dapat and Bakland and the Companies were involved in construction business and they carried out the construction of Holiday Inn and Holiday Plaza located on a piece of land which was a drainage reserve. That land was not meant for commercial purpose. It was the then Menteri Besar of Johore who approved the conversion of the land from drainage reserve to commercial purpose against the advice of the Town Council Johor Bharu. He also made certain allegations against certain people which is not relevant to this case. He however said that the companies (meaning Dapat and Bakland) made political donations to the plaintiff in return for favour. He alleged that it was the plaintiff who directed his Deputy Director to remove him as the Investigation Officer of the case alleging that he had demanded money from the two companies but he was never charged in Court. He knew of the payment of the RM1 million and the money was paid to protect Bakland and Dapat and such a payment was against s. 3(a)(i) of the Prevention of Corruption Act 42/61. In cross-examination he said that the State Director of ACA Johore directed him to investigate into the activities of Tan Sri Othman Saat, Dapat and Bakland. He admitted that ACA is an independent body. He knew of the payment of the RM1 million because Clement D'Cruz told him about it. The payment was made by bank draft in the name of UMNO Johor and handed to the plaintiff as head of UMNO Johor. He asserted that he filed a suit against the Director General, the Deputy Director General of ACA Malaysia and three other senior officers of ACA for defamation, for making false reports and for harassing him. Then he wrote to the plaintiff to complain about the senior officers of his Department continuing to harass him. He received words from the plaintiff to bring these officers to Court. The suit mentioned above was dismissed after a full hearing. In the course of his investigation he came to know that in 1965 Clement D'Cruz was being investigated for causing the death of a European. In re-examination he claimed that he was harassed because of his refusal to close the case of Bakland and Dapat. From his investigation he said he had found enough evidence against Tan Sri Othman. He also had evidence to show that the plaintiff received donation on behalf of UMNO from Clement D'Cruz.

Upon a careful scrutiny of the evidence of DW5 it reveals that he was directed to investigate into the activities of Tan Sri Othman Saat, Dapat and Bakland and not about the plaintiff. He knew of the payment of the RM1 million because that was what Clement D'Cruz told him. Although he said he knew that the payment was made to protect Dapat and Bakland, he gave no explanation as to how he came by the information. More importantly this witness failed to say how and why was the plaintiff required to protect Dapat and Bakland and what was the nature of the protection that plaintiff was supposed to give to the two companies? In the circumstances this piece of evidence has very little if no value at all. Again his allegation about the payment of the RM1 million was made in return for favour is another naked statement. What favour was plaintiff supposed to have given to the two companies?

From the evidence adduced at the trial of this case the only favour granted to the two companies is related to the conversion of the land from a drainage reserve to commercial purpose to enable the two companies to carry out the project of constructing Holiday Inn and Holiday Plaza but the approval for conversion was approved by Tan Sri Othman Saat the then Menteri Besar of Johore and not the plaintiff. DW'5 evidence about the plaintiff directing the Deputy Director of ACA to order him to close the case again cannot be reconciled with his statements given in cross-examination where he said that he wrote to the plaintiff complaining about his Department's senior officers harassing him. If he was sure that it was the plaintiff who was responsible in directing that the case be closed it is highly illogical for him to write to the very person who directed his senior officers to take the case away from him. He would and should have reported the matter to the Prime Minister or even to a member of

Parliament since he knew ACA was not under the control of the plaintiff. What is more important is that if he had collected sufficient evidence to show that the plaintiff had committed an offence of corruption and that the plaintiff had deliberately stopped him from dealing with the matter it is highly inconceivable that he would not have reported the matter to the Prime Minister or caused the matter to be raised in Parliament bearing in mind that he was not a timid or spineless person since he was unafraid to file a suit against the Director General of ACA etc as stated above. It is also worthy to note that in response to his complaint, the plaintiff had advised him to bring the matter to Court. If the plaintiff was responsible for preventing DW5 from carrying on the investigation the more logical thing which one would expect the plaintiff to do was to protect the officers and to ignore DW5's complaint.

For these reasons I am not prepared to accept the allegations made by DW5 in his evidence. All he had shown is that Dapat and Bakland had given RM1 million to UMNO and the payment was made in the form of a bank draft which was handed to the plaintiff.

The 1st defendant also called two more witnesses the first was DW3 a full time writer of books. In his evidence he merely tried to show that the first defendant need not write books to earn a living as he came from a rich family. He also said that the 1st defendant was an outspoken, courageous and very forthright in respect of his criticism. He was also a sincere man who took the responsibility to remind Sultans, top administrators and politicians from making mistakes. He glorified the first defendant as a person who loved his country, the Malays and the people of Malaysia. What DW3 said might well be true but that does not give the first defendant the right to write a book containing defamatory statements or make comments about a person when he could not justify such statements and comments. The final witness was DW6. As his evidence is rather equivocal I do not place much weight on it.

Reverting to the pleadings of the plaintiff, the words used in the book which would convey to the readers of statements of fact are these:

(1) the information received by the writer alleged that not only did Musa receive RM1 million given to him as donation for Johor UMNO ***but Musa pocketed the money.***

(2) based on this information the writer indicated to the readers that Musa is not only a traitor but has also become a toyol who pockets people's money.

(3) the plaintiff received moneys and gifts from Clement D'Cruz and the Ng Brothers.

To my mind reasonable persons, who read the three statements contained in the relevant pages and paragraphs together with the headline of Chapter 15 of the book, could only arrive at one conclusion namely that it was a fact that the plaintiff pocketed the money which Clement D'Cruz donated to the Johor UMNO funds and that he also received moneys and gifts from Clement D'Cruz and the Ng brothers. The sting on the said statements must inevitably create the imputation that the plaintiff was actually a cheater, a crook, a swindler and an untrustworthy and corrupt person. The words in their ordinary and natural meaning are more than sufficient to show that they are defamatory in that they convey an imputation derogatory of the plaintiff's reputation and his professional standing. If read between the lines they demonstrate a more serious defamatory meaning (see *Lewis v. Daily Telegraph* case cited earlier).

The next question is whether the defence of justification and fair comment can be sustained? I have earlier given an exposition of the scope of justification when I was dealing with the first charge. I need not repeat what I have said except to state the defendants must prove the justification of the facts as alleged but the defendants need to prove the literal truth of

every fact when the unproved fact does not materially injure the plaintiff's reputation. It had also been said that when the libel alleges a specific offence, particulars cannot be given of other improper acts which the plaintiff had done which had nothing to do with or remotely related to the charge to support the plea of justification - (see *Wernher Beit & Co.* case and the *Speidel* case cited earlier). The defence of justification in the present case is two fold namely (i) Musa himself has accepted money from Clement D'Cruz and (ii) Musa asked that the RM1 million be paid in cash but subsequently agreed that payment be made by bank draft and Mohamed Rahmat and Ng Eng Tee witnessed the plaintiff receiving the bank draft. The defendants also said they would rely on the evidence of Clement D'Cruz as it was he who informed the first defendant personally.

In my earlier discussions relating to the evidence of the first defendant, which is substantially based on what Clement D'Cruz told him, I have already stated that most of the allegations made by the latter are bare allegations unsupported by any concrete facts but rather based on conjectures and supposition. In addition it would appear to me that this Clement D'Cruz chose to throw all sorts of allegation at random against a number of persons named in his statements. In so doing he was to my mind trying to cover up his own misconduct. For instance as the founder and managing director of Dapat and Bakland he must have been given full power to manage the affairs of the companies and to control the staff. Yet he had the cheek to state that because of the misdeed of the person who joined the companies at the request of the plaintiff he lost control of the companies and tamely chose to resign and allowed that person to continue with the manipulation of the companies' funds until it caused Bakland to be wound up. Were the acts or omissions of such a person consistent with the behaviour or character of a good Christian and an honest man? The answer is obviously a definite no. This proposition is backed up by the evidence of DW5 who said that in 1965 investigations were carried out about the involvement of Clement D'Cruz in causing the death of a European. From the quality of his statements, the integrity and credibility of Clement D'Cruz is highly questionable. Bearing in mind that the first defendant relied substantially if not solely on the statements made by Clement D'Cruz to levy the defamatory charge against the plaintiff, it must follow from my finding that since the statements of Clement D'Cruz go no further than to establish that Bakland made a donation to the UMNO's funds by a bank draft made payable to Tabung Derma Rumah UMNO Johor, the first defendant has failed to establish that the plaintiff pocketed the RM1 million and that he had received moneys from Clement D'Cruz and the Ng brothers; neither was he able to establish that the plaintiff did or granted any favour to Dapat or Bakland or Clement D'Cruz. From the facts and my findings in the present case, the decisions in the *Abdul Rahman Talib* case *(supra)* is clearly distinguishable and are of no assistance to the defendants here.

It is also significant to note that in his evidence the plaintiff had said that he had told Clement D'Cruz that whatever donation he wanted to give to UMNO would be regarded as a transfer from the business arm to the political body of UMNO. Reading this piece of evidence together with the totality of the evidence adduced it clearly shows that Bakland in which company UMNO had 30% interest made the donation to UMNO voluntarily and with no string attached. Furthermore there is no evidence to show that the plaintiff had gone out to solicit or to ask for donation from Bakland, Dapat or Clement D'Cruz. I am therefore satisfied that there is nothing in the evidence to justify the defamatory words used by the first defendant to discredit the reputation of the plaintiff. The sting in the words used by the first defendant in his book is and has always been that the plaintiff pocketed the money donated by Bakland and that he received moneys from Clement D'Cruz and the Ng brothers but these allegations

are not true. The allegation of corruption is equally not established since no favour was granted or promised in return for the donation; neither was it shown that the plaintiff had granted any favour to any person. There is therefore no ground for alleging that the plaintiff at the material time was soliciting funds or a political donation with a corrupt intention - see *PP v. Datuk Haji Harun bin Haji Idris* (No. 2) [1977] 1 MLJ 15 at 22. In the circumstances I am convinced that the defence of justification cannot be sustained.

With regard to the defence of fair comment I have also dealt with the scope of fair comment earlier. Suffice it to say that fair comment must be based on facts contained in or referred to in the publication complained of. The facts must be sufficiently true to make the comment fair. In the present case the comments of the first defendant were based on the rumours which he received from his readers of the book Musa Derhaka - Musa the Traitor and the statements of Clement D'Cruz. The rumours and the statements are completely insufficient to establish the fact that the plaintiff had pocketed the donation given by Bakland; neither can they be accepted as proof of the plaintiff's acceptance of money from Clement D'Cruz nor the Ng Brothers.

As I have found that these rumours and statements are insufficient on a balance of probabilities to prove the defamatory allegation made by the 1st defendant against the plaintiff, the defence of fair comment must also fail - see *R. Sankar v. State* [1959] AIR Kerala 100 at 103.

With regard to the defence that the defamatory words were used on an occasion of privilege it cannot be accepted for the same reason which I have earlier given when I dealt with the first charge.

In any case even assuming that the words used amount to a fair comment or protected by qualified privilege, the defence based on these two ingredients is defeated by malice. Basing on the principles relating to malice laid down in the cases which I have cited above, I am satisfied that the express or actual malice on the part of the 1st defendant has been clearly proved and I say so for these reasons. Firstly I am convinced that the 1st defendant knew that the defamatory statements he made in the book are false or at least he had no genuine belief in the truth of the statements. This proposition is supported by his own statements appearing at p. 196 of the book (I have reproduced them earlier) in which he admitted that some of the facts in chapter 15 of the book might not be true and required clarification. Secondly I am equally convinced that he published the libellous statements recklessly. Bearing in mind that the only source from which the 1st defendant had gathered information to sustain his libellous statements was from the bare allegations and insinuations made by Clement D'Cruz against the plaintiff and the 1st defendant chose to accept such allegations and insinuations with indifference to the truth or falsity of the same he must be deemed to know that the allegations and insinuations were false. Furthermore the 1st defendant said at p. 196 of the book that he had cross-checked on the allegation of the payment of the RM1 million by Bakland as donation to UMNO yet he did not bother to cross-check the other allegations and insinuations with any one of the persons whom Clement D'Cruz had named and who he said were involved in the illegal payments. This proposition is fortified by the following assertions of the 1st defendant in his evidence:

> According to the teachings of the guy who taught me how to write political books in order to know the good of a person one should ask his friend. To know the bad of a person one should ask his enemy.

This assertion is self-evident of the malicious intention on the part of the 1st defendant in accepting the statements of Clement D'Cruz regardless of whether they were true or false.

Thirdly the libellous statements were "expressed extravagantly and were overcharged with epithets, hyperboles and rhetorical remarks" utterly beyond and disproportionate to the facts. The statements expressed in such strong and excessive language read with the headline of chapter 15 are to my mind sufficient evidence of malice - see *Adam v. Ward* case cited earlier. Fourthly the timing of the publication was not a coincidence. As stated earlier the fact that he published or caused the book to be published some 38 days before the UMNO General Assembly was a deliberate attempt on his part to enhance his reputation as a writer to the vast number of people who would be interested to read the book at that particular time. It would also enhance the sale of his book. He had therefore abused the privilege occasion. In choosing the time to publish the book containing the defamatory matters about the plaintiff cannot be reconciled with any honest intention on his part regardless of what he said in the introductory chapter of his book - see for example para. 2, p. 2 and para. 4, p. 3 of the book. What he had stated there were a mere contrivance to conceal his malicious intention.

In the ultimate analysis I am again fully satisfied that the second charge of libel purported to expose the plaintiff as a cheat, crook, swindler, corrupt and irresponsible and insincere person is highly defamatory of the plaintiff and the defendant's defence of justification, fair comment and qualified privilege cannot be sustained.

I shall now revert to the remaining charges. Before I proceed to consider the remaining charges I must again mention that I have scrutinised with care and I have taken into consideration all the evidence adduced at the trial. I do not therefore propose to set out the evidence in detail as it would only unnecessarily lengthen this judgment. Upon my scrutiny of the charges and the words complained of by the plaintiff in support of the charges I am satisfied that the words appearing in the following pages and paragraphs cannot sustain the charges made by the plaintiff:

Paragraph 3 of p. 26.

Here the writer was giving an opinion that the plaintiff "with vengeance always smouldering in his heart would keep advancing." The words in their natural and ordinary meaning are incapable of bearing defamatory meaning. The word "vengeance" might well be abusive but any right thinking person reading the word within the context of the statement would merely arrive at a conclusion that the plaintiff was an ambitious man.

Paragraph 5 at p. 35 and para. 1 at p. 36.

In these two paragraphs the writer was being cynical by equating the plaintiff with the Americans who produced the space ship 'the Challenger' and said that the space ship might have been built in Davos Switzerland where the plaintiff visited after his resignation as Deputy Prime Minister. The plaintiff in his statement of claim averred that the words appearing in these two paragraphs when read with the words appearing in para. 3 at p. 373 suggested that he was a person who worked for and who owed allegiance to foreign intelligence bodies and/or nations. Such a proposition is unacceptable simply because the words must be read within the context of the page in which they appear for to do otherwise would give them a completely different purport. I therefore hold that the words appearing in these two paragraphs cannot, in their natural and ordinary meaning, bear any defamatory meaning.

Paragraph 3 at p. 373.

In this paragraph the writer merely suggested that it was unusual for the plaintiff to have to go to Davos Switzerland to make up his mind to resign as Deputy Prime Minister. He ended that paragraph by asking the readers these questions: "Ada apa-apa ke di Davos? CIA atau M15 Inggeriskah?

It is to be noted that in p. 373 the writer was criticising the book written by the political secretary of the plaintiff in which apparently he had stated as to what had taken place in Davos when the plaintiff made up his mind to resign. The writer accused the political secretary for protecting his 'boss' when he wrote the book. Hence he suggested to the readers not to accept what the political secretary had said in his book without a proper examination of what had been said. The passage complained of must be read within the context of the other passages in the whole p. 373. When read in this way I would have to take into account any mere conjectures which a person reading that passage might possibly (though unnecessarily) form in order to give the words an defamatory meaning. In other words in deciding whether the passage is capable of defamatory I would have to accept the meaning which can emerge as the product of some strained or forced or utterly unreasonable interpretation. This I cannot do - see *Morris v. Sanders* [1954] 1 WLR 67 at 74. I therefore hold that the words in para. 3 of p. 373 are incapable of bearing a defamatory meaning or imputation.

Paragraphs 3 to 7 p. 78 and para. 5 at p. 79.

In these paragraphs the writer accused the plaintiff of going around campaigning to Malays to discard their manners and to become rude. But he also said that "At a Pena forum some years ago, Musa asked the Malays to become rude and Musa said this at the Balai Budaya Dewan Bahasa dan Pustaka at a forum organised by Pena."

Now there is no evidence before this Court that the plaintiff did not make the statement at the Pena forum as alleged by the writer. The plaintiff did not in his evidence categorically deny the allegation. That being the case, the writer's right to make the comment is justified. In any case the word "rude" to a right-thinking person could mean not to be submissive but be bold enough to speak out if one could not agree with what the politicians said. I therefore cannot find that the words bear a defamatory meaning or that the defence of justification cannot be sustained.

Paragraphs 5 and 6 at p. 36, para. 2 at p. 37, para. 1 at p. 49, para. 5 at p. 79, para. 8 at p. 112, para. 4 at p. 115 and para. 1 at p. 122.

In all these paragraphs appearing in the pages stated above I am also not satisfied that they are capable of bearing a defamatory meaning for the reasons which I have stated above namely that the writer was merely making flippant remarks of the plaintiff which no right-thinking man would conclude that they bear a defamatory meaning. To hold otherwise would mean that I have to take account any conjectures which a person reading the said paragraphs might possibly form or to put a strained or forced or utterly unreasonable interpretation of the words complained of. Furthermore some of the facts stated in some of the paragraphs have not been categorically denied by the plaintiff. The defendants could therefore rely on the defence of justification.

The next thing I must do is to deal with the rest of the remaining charges. The said charges were grounded on the following pages which depict him as a person who could not manage money matters, an unfaithful and highly manipulative and untrustworthy, a person without principles who was prepared to do anything in his lust for political power and as a treacherous and a traitor person to the Malay race and nation. The words relied on by the plaintiff appear in:

Paragraph 7 at p. 24.

In this paragraph the first defendant, applying his knowledge of physiognomy, opined that the plaintiff was incapable of managing money matters and that if he went into business he would lose. To my mind the writer was not merely expressing a flippant remark of the plaintiff

and expressing an opinion based on his knowledge of physiognomy which he honestly believed to be true. He deliberately tried to convey to the readers, under the guise of his knowledge of physiognomy, that the plaintiff was incapable of handling money let alone to manage the affairs of state. As such the words must bear a defamatory meaning derogatory of the plaintiff's reputation. Furthermore to hold otherwise I would open the flood gate to prospective defamers to go around making mischievous defamatory imputations against persons whom they do not like under the guise that they are experts in physiognomy with complete immunity.

Paragraph 7 p. 43 which reads:

> How could individuals (meaning Tengku Razaleigh Hamzah and the plaintiff) with unsound characters offer the country a sound government? Would the World's leaders respect Malaysia if it chose the duo to lead the country? Musa once called Ku Li a crook and Ku Li called Musa a crook. The world had not forgotten this, although UMNO members could pretend to forget.

Now the above mentioned passage was stated in the page which accused the plaintiff of having committed murder and as such no one should support him and make him a leader of UMNO. The writer was in fact telling the readers that because of the sins of the plaintiff he and Ku Li could never subscribe to the welfare of the people. In any case the leaders of the world could never give any respect to the government led by these two persons. His statement is not only an opinion but an expression of fact of the incapacity of both the persons mentioned therein to form a government which not only would not benefit the people but would cause leaders of the world to have no respect of the government of Malaysia. Such allegations based on pure baseless presumption on the part of the first defendant clearly bear a defamatory meaning or imputation against the plaintiff.

It might well be true that the allegations were directed against two persons namely Ku Li and the plaintiff but in the circumstances in which the offensive words were used the action lies at the suit of either Ku Li or the plaintiff - see *Gatley on Libel and Slander* 8th Edn. para. 291. Moreover it is highly inconceivable that the writer could honestly believe in what he said when the allegations were based on assumptions which he knew to be false or at least he was indifferent to the truth or falsity of what he had stated.

Paragraph 2 to 3 at p. 87 which reads:

> Unfortunately at the same time one Malay leader and the Deputy Prime Minister at that, who suggested that the Malays throw out the symbol of the race a heritage that had passed down the generations. I don't mean Ghaffar Baba; who else but Musa Hitam would do such acts of betrayal. That is why I label Musa as a traitor.

To my mind the words used in the paragraph are in their natural and ordinary meaning highly defamatory of the plaintiff. The comment that the plaintiff was a traitor is grossly exaggerated which goes to show malice on the part of the writer. The writer did not deem it fit to state how, where and when did the plaintiff betray the Malay race and the nation. His comments shows that if he was not vindictive he was at least trying to sensationalise his reputation as a writer who dared to speak out derogatory statements against leaders of the country regardless of the truth or otherwise of the facts with which he relied on to make the comment.

Not only is there nothing in the book to diminish the sting in the words used in paras. 2 to 3 at p. 87, the writer went on to add insult to injury when he said at paras. 2 and 3 at p. 89:

> Musa menentang keputusan itu dan mahu kilang ini dipindahkan ke tempat lain. Siapa yang tidak mahu syarikat itu bergerak di Papan? Orang Melayu? Bukan. Orang Cina. Orang Cina cari macam-macam sebab supaya projek ini dipindahkan. Dan Musa Hitam setuju dengan mereka. Musa Hitam ini perjuangkan orang Melayu atau orang Cina? Musa itu pemimpin UMNO atau pemimpin MCA.
>
> Peristiwa di Sabah juga jadi bukti yang Musa sokong orang Kristian. Di sini juga dia bohong besar. Sepatutnya Tun Mustapha dan Harris Salleh sudah boleh tubuhkan Kerajaan Islam di Sabah. Tapi Musa Hitam tak campur.

The writer then relied on the facts as stated above to accuse the plaintiff of betraying UMNO influence in Sabah and also siding the Chinese in respect of the Papan incident where the Chinese protested about using a site in Papan to dump some debris containing a chemical element known as Itterium which would endanger the health of the people of Papan.

From the above discussions it is manifestly clear that the words used in para. 7 at p. 43 and paras. 2 and 3 at p. 87 are defamatory of the plaintiff to which the defence of justification or privilege cannot be sustained.

In the ultimate analysis it is manifestly clear that the plaintiff has established eight out of the twelve charges namely charges 1, 2, 3, 4, 7, 10, 11 and 12 contained in para. 4 of his statement of claim. I should mention that so far all the discussions appearing in this judgement relate primarily to the first defendant. But they are equally applicable to the second defendant as publisher and distributor of the book and the third defendant as printer of the book. Even if, which I could not accept, they did not understand the drift of the book at a first reading, they acquired the right to publish, distribute and print and they went on actually to publish, distribute and print in circumstances from which clearly I am entitled to infer that they went ahead with the most cold-blooded and clear-sighted appreciation of what they were doing. What the full explanation of their actions may have been will never be known since the two defendants did not elect to give evidence. In the absence of any explanation, I am entitled to infer that they had calmly calculated that the risks attendant on the publication, distribution and printing of the book did not outweigh the chances of profit. I am equally entitled in the absence of any explanation to hold that second and third defendants were aware that the words complained of could be reasonably understood to bear the meaning attached to them as contended by the plaintiff yet they published, distributed and printed the book knowing the words in this sense to be false. They are therefore equally guilty of defaming the plaintiff.

I shall now assess the damages to be awarded to the plaintiff. It is stated in *Gatley on Libel and Slander* 8th Edn. para. 1451:

> They (meaning the jury) are entitled to take into their consideration the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of publication, the absence or refusal of any retraction or apology,and the "whole conduct of the defendant from the time when the libel was published down to the very moment of their verdict. They may take into consideration the conduct of the defendant before action, after action, and in the Court at the trial of the action," and also, it is submitted, the conduct of his Counsel, who cannot shelter his client by taking responsibility for the conduct of the case. They should allow "for the sad truth that no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm it has done or the hurt it has caused." They should also take into account the evidence led in aggravation or mitigation of the damages. They should not take into account in assessing damages any part of the words complained of in respect of which the defendant has made out a defence, or any damage done to the plaintiff's reputation or feelings by an defamatory matter or other wrong for which the defendant is not responsible. They should not speculate on whether the defendant will be indemnified.

In the said paragraph the author is speaking of compensatory damages which are not confined to actual pecuniary loss or anticipated pecuniary loss or any social disadvantage. Compensatory damages may include the natural injury to the plaintiff's feeling - the natural grief and distress which he may have felt at having been spoken of in defamatory terms, or if the offensive words complained of constitute injury to the plaintiff's pride and self confidence - see *McCarey v. Associated Newspapers* [1964] 2 QB at pp. 104-105. Moreover it is well established that in cases where the damages are at large the jury (or the Judge) can take into account the motives and conduct of the defendant by which they would aggravate the injury done to the plaintiff. In awarding aggravated damages the natural indignation of the Court at the injury inflicted on the plaintiff is a perfectly legitimate motive to make a generous rather than a mere moderate award to provide an adequate solatium - see *Broome v. Cassell* [1972] AC 1027 at 1073.

The Counsel for the plaintiff in his submission urged me in addition to impose exemplary or punitive damages. It has been stated in *Gatley on Libel and Slander* 8th Edn. para. 1454 that exemplary damages or punitive damages may be awarded for two categories only. This proposition of the author is based on the leading case of *Rookes v. Barnard* [1964] AC 1129 at pp. 1230-1231. The first category is not applicable to the present case. I need only to mention the second category which has been set out by the author of Gatley textbook in this way (see para. 1454(ii)):

> (ii) where the defendant's tortious act has been done "with guilty knowledge, for the motive that the chances of economic advantage outweigh the chances of economic, or perhaps physical penalty." It must be the plaintiff himself who suffers by such conduct, if he is to receive punitive damages; the jury must assess such damages with restraint, and may take into account the means of the parties. The nature and circumstances of the publication may be sufficient material from which the jury can draw the necessary inferences.

The distinction between compensatory damages or aggravated compensatory damages and exemplary or punitive damages is encapsulated in the compendious passage in the judgment of Davies LJ in *Broadway Approvals v. Odhams Press* [1965] 1 WLR 805 at 822 where it was said.

> If the libel outrages the plaintiff it is a proper element in compensatory damages but if the jury award damages because the libel outrages them that would be punitive.

Furthermore the Court must be slow in awarding exemplary damages if such damages may amount to double counting of the damages - see *Cassel v. Broome* case *(supra)* per judgment of Lord Hailsham.

Following the legal principles set out in the above stated authorities I shall first examine the conduct of the plaintiff, his position and standing prior to the publication of the book. The plaintiff had said in his evidence (which has not been challenged) that he only knew the first defendant casually as a writer and he had met him a few times. Hence he had never imparted any information to the first defendant about personal life, his political aspiration or his performance of governmental and public duties. He had never provoked the first defendant to make the libellous statements about him. In his evidence as stated earlier the plaintiff has satisfactorily satisfied the Court that his reputation prior to the publication of the book was and apparently still is recognised both nationally and internationally as a politician and a leader of a very high calibre.

The third matter which I am entitled to take into consideration is "the whole conduct of the defendants from the time when the libel was published down to the very moment of the verdict." In other words I may make into consideration the conduct of the defendants before the action, after the action and in Court at the trial of the action. As to the conduct of the defendants before the action they had published 10,000 copies followed by a second print of another 10,000 copies. The first defendant had also prepared an English version of the book and would have it published but for the injunction obtained by the plaintiff to prevent him from further publication and distribution of the book. This shows that the defendants were prepared to go ahead to publish and distribute the book regardless of the offensive words contained therein. The publication of the book just prior to the UMNO General Assembly compounded their motive to enhance the sale of the book and the reputation of the first defendant as a reputable writer of the "truth". More importantly their motive was to influence the delegates participating in the UMNO General Assembly not to support the plaintiff. I must, however, say that whether they succeeded in doing so is questionable. Counsel for the plaintiff urged me to hold that just because the plaintiff lost by 40 odd votes one could infer that the book had caused the defeat to the plaintiff at the election. I cannot accept such a proposition simply because another inference which could equally be drawn would be that if the book had influenced the delegates the plaintiff could have been defeated by more than 40 odd votes. Be that as it may there is no doubt that the motive of the defendants was to influence the delegates to the detriment of the plaintiff. Finally the assertions of the first defendant in his testimony clearly manifested that he persisted in saying that he had the right to say what he wanted to say and that he was not concerned that "a person's reputation is harmed or jeopardised" since he believed the contents of the book were true.

Taking all the above factors into consideration, it is manifestly clear that the defendants' motive in publishing the book containing the libellous words before the UMNO General Assembly can only be motivated by malice and the libels were perpetrated for enhancing the first defendant as a reputable writer and for financial gains. In fact his profits from the sale of the book was over RM100,000. They had taken advantage of the situation by depicting the plaintiff in the most venomous and worse possible light. It is my considered opinion that the proper quantum of damages to be awarded to the plaintiff cannot be less than RM100,000.

I shall therefore give judgment in favour of the plaintiff and the defendants are to pay the plaintiff damages in the sum of RM100,000. I also grant an injunction against repetition of the libels as claimed. Costs of the proceedings are to be paid by the defendants to the plaintiff.

Also found at [1991] 1 CLJ 314